IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA :
:
v. : CR 07-005S
:
EUDY TEJADA-PICHARDO a/k/a :
Enoc Soto :

GOVERNMENT'S MOTION IN LIMINE

The government moves the Court to limit the scope of the defendant's cross-examination to matters raised on direct examination and matters affecting the credibility of the witnesses. See Fed. R. Evid. 611(b). Specifically, in this case, the Court should preclude the defendant from cross-examining government witnesses regarding various Department of Justice policy manuals. The Court should also not allow the defendant to cross-examine government witnesses regarding the unrelated prosecution of Lisa Torres and John Cicilline. The defendant's intention to cross-examine government witnesses on these matters violates Fed. R. Evid. 402, Fed. R. Evid. 602, Fed. R. Evid. 611, and Fed. R. Evid. 802.

POLICY MANUALS

The agents' compliance or failure to comply with government policy in the handling of the investigation does not make any fact of consequence more or less probable. See Fed. R. Evid. 401. Moreover, cross-examination along these lines has the potential to confuse or mislead the jury since the agents' alleged failure to comply with DEA policy does not affect the jury's determination of whether the defendant conspired to distribute and distributed cocaine. See Fed. R. Evid. 403. The agents' adherence to various policies set forth in the Attorney General's Guidelines or in DEA policy manuals does not affect the jury's assessment of the credibility of the agents. Thus, questioning regarding the policies is not within the scope of proper cross-examination. See Fed. R. Evid. 611(b). Finally, the policy manuals themselves constitute hearsay statements of out-of-Court agency personnel. See Fed. R. Evid. 802.

In United States v. Hensel, 699 F.2d 18, 38-39 (1st Cir. 1983), the defendant sought discovery of various DEA manuals for cross-examination of the government's agent-expert. The court denied the defendant's discovery request because the materials were not material or necessary for effective cross-examination. See id. The court noted that the agent had not relied upon the manuals in reaching his opinions, the defendant had not shown how the manuals were material to his defense, and the manuals were not necessary for effective cross-examination. See id.

In United States v. Norman, 415 F.3d 466, 473-74 (5th Cir. 2005), the Fifth Circuit affirmed the district court's decision to preclude the defendant from cross-examining a government agent on a Justice Department manual. See id. The court noted that learned treatises are exempt from the hearsay rule if they are established as reliable authority; however, the defendant in

Norman did not offer an expert in this area, the agents did not recognize the manual, and the district court did not take judicial notice of the manual's reliability. See id. Furthermore, the court concluded that the agent's testimony in the particular area in question was lay testimony, and therefore not subject to cross-examination on the manuals. See id.

In this case, cross-examination about the Attorney General's Guidelines or DEA policies is apt to confuse jurors and distract them from the issues of the case. The defendant's entrapment claim seems to involve a claim that the female informant was improperly supervised; however, whether that level of supervision complied with Justice Department policies does not make it any more or less likely that the informant misbehaved.

The direct examination of TFA Mike Naylor is not likely to open the door to cross-examination of Justice Department policies. Much of TFA Naylor's testimony will be lay testimony in the sense that is based upon the facts of this case. To the extent TFA Naylor offers opinions, they are not based upon the manuals. In fact, he testified that he was not aware of the manuals prior to this fall.

There has been no suggestion that the policies cited by defense counsel are binding on the agents. Nor is TFA Naylor under investigation for his handling of the case. TFA Naylor conducted the entire investigation with the knowledge and approval of his DEA supervisors. The defendant, like the defendant in Hensel, has not shown how cross-examination on Justice Department policies will prove material to his defense. While the level of supervision of the informant might impact upon the allegations of entrapment, whether that supervision complied with agency policies does not and therefore is not proper fodder for cross-examination.

CASE AGAINST LISA TORRES

Pursuant to Fed. R. Evid. 402, Fed. R. Evid. 602, Fed. R. Evid. 611, and Fed. R. Evid. 802, the government moves the Court to exclude cross-examination or the presentation of evidence relating to the case against John Cicilline or Lisa Torres.

The defendant has failed to show the relevance of questioning on the unrelated prosecution pending in the District of Massachusetts. There is no evidence that Lisa Torres was involved in this case, nor does the defendant claim as much. The female informant is not cooperating on behalf of Lisa Torres and Lisa Torres is not a witness or a declarant in the case subject to impeachment. In short, the female informant's association with Lisa Torres is no more pertinent than a defendant's association with an unsavory character. The female informant's associates have no bearing on whether the defendant conspired to distribute cocaine and distributed cocaine.

A foray into this area, however, does have the potential to waste time and mislead the jury. Questioning about an unrelated criminal prosecution stemming from events predating this case by nearly two years will add confusion to the case. Such questioning necessarily involves the presentation of hearsay matters. See Fed. R. Evid. 802. Additionally, none of the named witnesses in this trial have personal knowledge of the Lisa Torres case and therefore their testimony lacks a proper foundation. See Fed. R. Evid. 602.

The court has provided the defendant with ample opportunity to explore the Lisa Torres avenue and it has proven to be a dead end. Accordingly, the court should refuse to allow the issue to be brought before the jury in the defendant's trial.

Respectfully submitted,

UNITED STATES OF AMERICA
By its Attorneys,

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CERTIFICATE OF SERVICE

On November 27, 2007, I caused the within “Government’s Motion In Limine” to be filed electronically and it is available for viewing and downloading from the ECF system.

Electronic notification:

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